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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/077,572	10/13/1998	MICHAEL A. APICELLA	875001US2	6184

7590

11/21/2002

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MINNEAPOLIS, MN 55402

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 11/21/2002

85

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance with
37 CFR 1.192(c)**

Application No.

09/077,572

Applicant(s)

Apicella et al.

Examiner

S. Devi, Ph.D.

Art Unit

1645



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The Appeal Brief filed on Mar 28, 2001 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☒ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See attachment.

SD. Novem-02
S. DEVI, PH.D.
PRIMARY EXAMINER
ART UNIT 1645

ATTACHMENT TO PTO-462

- Item 2.** A) The status of canceled claims is missing.
B) Claims 22-26, 29 and 32-34 (Appendix I) are stated to be the subject of the Appeal. Claims 22-26, 29, 32 and 33 are not identical to the rejected claims. Claim 34 has not been a part of any rejection.
- Item 3.** The after-final amendment received 08/21/01 was denied entry via the Advisory Action mailed 12/05/01.
- Item 5.** The issue presented for review are incorrect and/or incomplete. The issues as presented on page 3 of the Brief, lists only the rejection made under 35 U.S.C. § 112, first paragraph with regard to the deposit issue, but fails to list the rejection made under 35 U.S.C. § 112, first paragraph with regard to the new matter issue, and the provisional rejections made under the judicially created doctrine of obviousness-type double patenting.
- Item 8.** Appealed claims are not identical to the rejected claims.
- Item 9.** The argument presented in section 8 of the Appeal Brief is directed to claims as amended via the after-final amendment of 08/21/01, which was denied entry via the Advisory Action mailed 12/05/01. The argument is not directed to claims as they stood rejected in the Final rejection mailed 02/21/01.